

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

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CIVIL ACTION

FILE NO: 1:17-cv-2989-AT

**STATE DEFENDANTS' WITHDRAWAL OF MOTION TO QUASH NON-
PARTY SUBPOENA AND REQUEST FOR RELIEF**

COME NOW Defendants Secretary of State Brad Raffensperger, State Election Board, and State Election Board Members (collectively, "State Defendants") and file this withdrawal of their Motion to Quash and Request for Relief.

On April 15, 2019, Plaintiffs directed a subpoena under FED. R. CIV. P. 45 to Ms. Jennifer Doran, Elections Supervisor of the Morgan County Board of Elections and Registration via electronic mail sent to Mr. Christian Henry of Hall, Booth, Smith, P.C., with an April 30, 2019 date of compliance. [Doc. 369-1]. Since discovery has not yet begun and Plaintiffs did not seek leave of this Court to issue a subpoena outside of the discovery period, State Defendants filed a Motion

to Quash Non-Party Subpoena and Request for Relief, seeking to quash the subpoena as premature and procedurally defective and prevent issuance of additional subpoenas while this Court considers the posture scope of this case moving forward. [Doc. 369]. This Motion is currently pending before the Court.

On May 13, 2019, some fourteen days after the date for compliance of the subpoena and twenty-eight days after its issuance, Coalition Plaintiffs withdrew their subpoena, apparently acknowledging that it was premature. [Doc. 371]. But Coalition Plaintiffs never indicated to State Defendants nor, to our knowledge, the subject of the subpoena, that the date of compliance stated in the subpoena was anything less than the date of the required response. Rather than giving informal notice of an intent to issue a subpoena at a later (and procedurally permissible) time, Coalition Plaintiffs cloaked themselves in the power of this Court and issued a subpoena which by all indications to its non-party subject was enforceable on its date for compliance by the Court's power of contempt. [Doc. 369-1]. Coalition Plaintiffs, in their email to Mr. Henry, further implied that this Court had already ordered or otherwise entertained some form of "expedited discovery." [Doc. 369-2]. Coalition Plaintiffs have apparently not halted their early discovery crusade by withdrawing this subpoena. State Defendants are aware of multiple Open Records

Act requests, under O.C.G.A. § 50-18-70, *et seq.*, that have been sent to Mr. Henry regarding the subject matter of this litigation.

Given that Coalition Plaintiffs have represented to this Court that their subpoena was premature and procedurally defective; have withdrawn that subpoena; and apparently agree that they will not re-issue the subpoena or other similar subpoenas until the proper time [Doc. 371], State Defendants respectfully withdraw their pending Motion to Quash Non-Party Subpoena and Request for Relief. State Defendants reserve the right to further raise these issues with the Court if Plaintiffs do not adhere to these representations.

Respectfully submitted this 14th day of May, 2019.

ROBBINS ROSS ALLOY BELINFANTE
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/s/ Vincent R. Russo

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' WITHDRAWAL OF MOTION TO QUASH NON-PARTY SUBPOENA AND REQUEST FOR RELIEF** has been prepared in Times New Roman 14-point, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Vincent R. Russo
Vincent R. Russo
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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing **STATE DEFENDANTS' WITHDRAWAL OF MOTION TO QUASH NON-PARTY SUBPOENA AND REQUEST FOR RELIEF** with the Clerk of Court using the CM/ECF system, which will automatically send counsel of record e-mail notification of such filing.

This 14th day of May, 2019.

/s/ Vincent R. Russo

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